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September 17, 1999

By Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W., TW-A325
Washington, DC 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 97-81

Dear Ms. Salas:

Enclosed please find an original and nine (9) copies of the Comments of Corn Belt Power Cooperative in response to the Further Notice of Proposed Rulemaking (FCC 99-101) released in this docket on July 1, 1999.

I am also enclosing an extra copy of the Comments that I ask you to stamp as received and return to the messenger for our records.

Please telephone if I can be of assistance with regard to this filing.

Very truly yours,


James U. Troup

cc: John Borkowski, Esq. (with paper copy of comments)
Chief, Policy and Rules Branch, Public Safety and Private Wireless Division

Shellie Blakeney, Esq. (with paper and disk copy of comments)
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International Transcription Services (with disk copy of comments)

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residences, small towns and commercial and industrial power users in 27 counties in north central Iowa. Corn Belt's generation facilities include nuclear, coal-fired and hydro-electric systems.

Eligibility for Public Safety Radio Auction Exemption

Corn Belt has 10 MAS licenses in the 928/952/956 bands. Corn Belt provides no commercial radio service whatsoever to subscribers. It uses the MAS frequencies solely to monitor its own electrical grid. MAS monitoring capability is essential to maintain the safety and integrity of Corn Belt's generation and transmission systems.

Accordingly, Corn Belt's use and the similar uses by many other utilities, railroads, pipelines, and other organizations fall squarely within the auction exemption for "public safety radio services" created by Congress in the BBA. The exemption prohibits auctioning of licenses:

for public safety radio services, including private internal radio services used by State and local governments *and non-governmental entities* ..., that --

- (I) are used to protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public.²

The Conference Report accompanying the legislation states that "'private internal radio services' used by *utilities*, railroads ..." and other industries are eligible for the exemption.³ This precisely describes Corn Belt's situation. Although Corn Belt happens to be partially government-owned (one of its major members is a cooperative of municipal utilities), there is no requirement that the applicant be a governmental organization or a private organization (such as a volunteer fire department) whose sole business is protecting the public.

² 47 U.S.C. Sec. 309(j)(2) (emphasis added).

³ House (Conference) Report No. 105-217 at 572 (emphasis added). The Report also states that the definition of "public safety radio" is "much broader" than the definition of "public safety services" codified at Section 337(f)(1). *Id.*

The 928/952/956 Bands

The Commission in its *Further Notice* recognizes that public safety radio licensees like Corn Belt may be heavily using the 928/952/956 bands. *Further Notice*, par. 20. If this is in fact the case, the Commission suggests that it may allocate these bands entirely for public safety use. *Id.*

The Commission's suspicions are correct. Without question, public safety radio licensees such as Corn Belt are the primary users of the 928/952/956 spectrum.⁴ Because of the pressing need for frequencies in this band, utilities, railroads, and petroleum industry companies from across the country have reported to the Commission that the 928/952/956 bands are approaching exhaustion in the regions in which they operate, and other commenters have made similar observations.⁵ A coalition of utility, railroad, and petroleum industry associations recently filed an emergency request asking that the Commission lift its newly-imposed freeze on the assignment of the remaining licenses in these bands.⁶

In Iowa, reliance on the 928/952/956 bands for monitoring the electric power grid and similar safety-related uses has been so heavy that on many routes there is no spectrum left. Corn Belt has

⁴ Emergency Request for Limited Exception to Application Freeze, filed on July 23, 1999 by the United Telecom Council, Association of American Railroads, and American Petroleum Institute, at 8 and n.12 (over 60% of MAS applications are from industrial licensees providing public safety radio services); Petition of Microwave Data Systems for Commencement of Licensing in the 932/941 MHz Band[s], filed February 2, 1998, at 2-3 ("MDS Petition") (MAS equipment manufacturer notes that industrial licensees which provide public safety radio constitute "overwhelming majority of MAS users").

⁵ See Joint Supplemental Comments of the American Petroleum Institute, American Water Works Association, Association of American Railroads, East Bay Municipal Utility District, and UTC -- The Telecommunications Association, filed October 30, 1998 at 12 ("Joint Supplemental Comments"); Reply Comments of GTECH Corporation, filed May 16, 1997 at 6; Reply Comments of Sensus Technologies, filed May 16, 1997 at 3; Comments of Burlington Northern and Santa Fe Railway Company and Norfolk Southern Corporation, filed May 1, 1997 at 3; Comments of Puget Sound Energy, Inc., filed April 22, 1997, at 5

⁶ See n. 4, above (Emergency Request for Limited Exception to Application Freeze).

10 MAS licenses in these bands, and needs more. However, because of the spectrum shortage, Corn Belt has been unable to find needed spectrum at several sites, including Glidden, Iowa and Nevada, Iowa.

At the very least the Commission must preserve the 928/952/956 bands for public safety use.⁷ In the 1997 Notice, the Commission proposed to reserve the entire band for private internal use by licensees, not necessarily safety-related, and to assign these frequencies without auction.⁸ The subsequent passage of the BBA requires some adjustment to the 1997 proposal because private use not related to public safety no longer enjoys an exemption from auctions, but the comments have shown that the vast majority of the private usage is in fact safety-related. This is consistent with the Commission's finding that "[h]istorically, the primary [private] users of MAS spectrum have been the power, petroleum and security industries for various alarm, control, interrogation, and status reporting requirements" *Further Notice*, par. 3 (bracketed material added).⁹ The Commission should stick with its 1997 proposal, modifying the proposal only to require that the usage of the 928/952/956 bands be safety-related as well as private and non-commercial.

932/941 Bands

Because of the approaching exhaustion of the 928/952/956 bands, Corn Belt and other utilities and railroads across the country will have to obtain capacity in other MAS bands in order

⁷ The Commission in the *Further Notice* stated that it might grandfather existing commercial use of the 928/952/956 bands if it dedicated the bands to public safety radio. Whatever approach it takes, the Commission should grandfather all existing use. No licensee, public safety or commercial, should have to undergo the disruption of shifting frequencies.

⁸ *Notice of Proposed Rulemaking, In the Matter of Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, FCC 97-58, 12 FCC Rcd. 7973, par. 13 (1997) ("1997 Notice").

⁹ The Commission here also noted usage by the paging industry, which would be commercial usage. *Further Notice*, par. 3.

to provide safe service to their customers. Given the heavy usage of the 928/959 bands by Part 22 common carriers, the key spectrum is in the unassigned 932/941 bands, which contain 40 channels pairs. In its 1997 Notice, the Commission proposed to make 35 of these channel pairs available for commercial subscriber-based services while dedicating five (5) of the channel pairs for "public safety / Federal government use," defining "public safety" more narrowly than defined in the subsequently enacted BBA. *1997 Notice*, par. 66 and n.110; *see Further Notice*, par. 22. The Commission should adjust the 1997 proposal so that the BBA definition quoted above applies. Corn Belt also recommends that the FCC adjust the 1997 proposal based on subsequently-filed comments, which indicate that 20 to 25 channel pairs in the 932/941 bands are required to meet demand for public safety radio.¹⁰ As so modified, the Commission should implement its 1997 proposal.

For three reasons, the Commission should allocate sufficient spectrum to meet the needs of public safety radio. First, Sections 303 and 307(a) of the Communications Act require the Commission to consider the public interest in allocating spectrum. This important principal should determine the use of the MAS frequencies, whether it be for (1) non-commercial radio service designed to prevent electric, railroad and other industrial accidents or (2) commercial radio service for general voice and data communications. While providing more spectrum for ordinary commercial voice and data services may increase competition and so provide an economic benefit, preventing accidental deaths, injuries, and property damages has always been a higher priority.¹¹ The risk of serious accidents is always present in generating and transmitting nuclear and conventional electric power. Judging by the comments on file, similar risks exist in operating railroads, pipelines and other infrastructure industries.

¹⁰ Joint Supplemental Comments at 12-22; MDS Petition at 4.

¹¹ *See, e.g., Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 443 (DC Cir. 1991).

Second, to uphold the intent of Congress in creating the public safety auction exemption, the Commission must assign sufficient spectrum to public safety services for the exemption to remain meaningful. If the Commission allocates insufficient spectrum, thereby forcing public safety radio licensees to bid for spectrum designated for commercial use (against for-profit companies who will sell service to subscribers and can bid on the basis of those anticipated revenues), the statutory exemption will gradually become a dead letter. Over time, as the need for spectrum for public safety use grows with the economy, the exemption will erode to the point that the only licensees that will retain any protection will be those who years ago just happened to obtain all of the spectrum that they will ever need.

Third, the Commission should allocate the 932/941 bands based on current need for the spectrum, not on the number of "lottery tickets" obtained in 1992 by applicants whose applications have since been dismissed. As discussed in the *Further Notice*, it may be that the majority of applicants in 1992 for licensees in the 932/941 bands desired to provide commercial service to subscribers -- if they won the anticipated lotteries. However, equipment manufacturers who deal with parties actually using MAS frequencies in any band have found that the vast majority use them only for private internal communications.¹² Moreover, the Commission's 1992 filing window proved only that application mills were capable of generating substantial numbers of entries into the lottery pools. Given that Congress has since withdrawn authority for allocation of spectrum by lottery, a method which encouraged the filing of multiple applications on a speculative basis, a "majority rule" approach to allocating the entire 932/941 spectrum makes no sense, particularly

¹² Emergency Request for Exemption from Application Freeze at 10.

when based on a seven-year old "vote" taken in 1992.¹³ Dedicating 20 to 25 of the channels to auction-free public safety use, while leaving the remaining 15 to 20 available for commercial services, will far better serve the public interest. *See also*, 47 U.S.C. Sec. 309(j)(7) (allocation decision cannot be based on expectations of obtaining auction revenue for government).

Auctioning the entire 932/941 bands would also be contrary to the public interest given the Commission's anticipation that auctioned licenses would cover broad regions. Monitoring the electric grid and similar safety-related tasks require a number of discrete transmission paths, *e.g.*, a master station and several remote sensors along a line, rather than the ability to transmit to or from any point within a broad area. Site licensing accommodates this reality. Awarding regional licenses in an auction would force public safety users to bid and pay for the unneeded right to transmit over large swaths of territory in order to obtain the needed discrete transmission paths.

Auctioning large regions would unnecessarily create mutual exclusivity. Where two or more applicants seeking to operate at different sites within a region are able to share the same frequency, they should coordinate with each other and not be forced into an "all or nothing" auction of an entire region. Congress in passing the BBA reminded the Commission that it has an "obligation ... to use engineering solutions, negotiation ... and other means in order to avoid mutual exclusivity."¹⁴

Alternatives if the Commission Decides to Auction the Entire 932/941 Bands

If the Commission determines to auction the entire 932/941 bands (or any of the 928/952/956 bands) it should consider confining the auctions to major urban markets, or setting a timetable in

¹³ A "majority rule" approach would also be contrary to the 1997 BBA, which repealed the statutory language on which this approach had apparently been based. *See* former 47 U.S.C. Sec. 309(j) (1994) (directing the Commission to consider whether the "principal use" of a band was for subscriber-based services).

¹⁴ 47 U.S.C. Sec. 309(j)(6)(E) (referred to by the BBA at 47 U.S.C. Sec. 309(j)(1)).

which urban licenses are auctioned first. Demand for commercial services is likely to be greater in urban areas than in rural areas. Moreover, rural areas have more dispersed populations, facilitating coordination of site-licenses as an alternative to regional auctions. Utilities serving rural areas and providing public safety service are often smaller and have less access to the resources necessary to participate in auctions. Many, including Corn Belt, are member-owned cooperatives without access to outside investor capital.

Finally, any auction of MAS frequencies available for both commercial and public safety use should include a public safety bidding credit similar to the small business bidding credit already proposed. Using spectrum to safeguard the electric power grid and prevent other industrial accidents is very much in the public interest, yet will not generate revenue for the applicant to help finance bids. A credit scheme would partially recognize this public interest factor, although it would fall short of the exemption from auctions intended by Congress.

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Conclusion

Corn Belt respectfully requests that the Commission allocate sufficient auction-free MAS frequencies to public safety radio so that organizations utilizing MAS spectrum for public safety purposes will not be forced into the untenable position of bidding for spectrum in auctions against for-profit commercial enterprises despite (1) the statutory auction exemption for public safety radio and (2) the adverse consequences for the public interest.

Dated September 17, 1999

Respectfully submitted,

CORN BELT POWER COOPERATIVE

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

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